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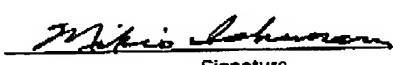
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) H1855	
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		First Named Inventor <b>Witold P. Maszara</b>	
		Art Unit <b>2818</b>	Examiner <b>Mai Houn C. Tran</b>
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the			
<input type="checkbox"/> applicant/inventor.		Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		<u>Mikio Ishimaru</u> Typed or printed name	
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>27,449</u>		<u>(408) 738-0592</u> Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____		<u>January 7, 2006</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			

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Docket No.: H1855

JAN 07 2006

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<i>In re</i> Application of:	Witold P. Maszara	:	Confirmation No.:	7143
Serial No.:	10/727,999	:	Art Unit:	2818
Filed:	12/3/2003	:	Examiner:	Mai Houg C. Tran
For:	FORMATION OF ABRUPT JUNCTIONS IN DEVICES BY USING SILICIDE GROWTH DOPANT SNOWFLOW EFFECT			

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Commissioner for Patents  
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**ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Madam:

The following Arguments are submitted under the Pre-Appeal Brief Conference Pilot Program with a Pre-Appeal Brief Request for Review and Notice of Appeal in response to the Advisory Action mailed December 19, 2005. Applicant filed a Response on September 8, 2005, within two months of the July 8, 2005, Final Office Action (the Final Office Action).

The pending claims 1-20 are set forth in the Applicant's original application.

**ISSUES PRESENTED**

Did the Examiner err in an attempt to create a *prima facie* case of anticipation under 35 U.S.C. §102 by citing a reference that does not disclose source/drain regions enriched with dopant from the silicide layers.

Serial No.: 10/727,999  
Group Art Unit: 2818

Did the Examiner err in an attempt to create a *prima facie* case of obviousness under 35 U.S.C. §103 by citing references that do not teach or suggest source/drain regions enriched with dopant from the silicide layers.

### ARGUMENT

The Examiner has not established a *prima facie* case either of anticipation under 35 U.S.C. §102 or of obviousness under 35 U.S.C. §103. There is no disclosure, teaching, or suggestion in either of the cited references (Dennard or Sitaram) of source/drain regions enriched with dopant from the silicide layers. The Examiner's assertion of dopant enrichment is without any factual basis or support in the record. This is reversible error that will be overturned on appeal.

**Claims 13-15 are rejected under 35 U.S.C. §102(b) as being anticipated by Dennard et al. (U.S. Patent No. 6,812,527, hereinafter "Dennard").**

**Claims 16-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Dennard in view of Sitaram et al. (U.S. Patent No. 5,352,631, hereinafter "Sitaram") and further in view of the remark.**

Both the §102 rejection and the §103 rejection are addressed together below since neither Dennard nor Sitaram discloses, teaches, or suggests source/drain regions enriched with dopant from the silicide layers.

The Applicant's claimed combinations in independent claims 13 and 19 include the explicit limitation not disclosed, taught, or suggested in Dennard or Sitaram, either singly or in combination, of:

"source/drain regions, beneath the silicide layers, that are enriched with dopant from the silicide layers"

The Examiner stated in the Office Action dated March 21, 2005:

"...Dennard discloses ... source/drain regions 50, beneath the silicide layers 56, that are enriched with dopant from the silicide layers ... (col. 3, cols 7-8, and figs. 1, 14, 15)."

Serial No.: 10/727,999  
Group Art Unit: 2818

However, Dennard, column 7, line 65 – column 8, line 26, states:

“After spacer formation, source/drain regions 50 are formed into body region 38 abutting each spacer utilizing a conventional ion implantation and annealing process ... Next, ... raised source/drain regions 52 ... are formed ... by depositing a layer of epi polysilicon or Si on the exposed source/drain regions, and doping the thus deposited epi Si or Si layer by ion implanting and annealing. ... Next, ... is [the step of] converting the raised source/drain regions ... into silicide regions 56 by utilizing a conventional salicidation process...” [deletions for clarity]

Dennard does not disclose anything about any dopant concentration effect upon the underlying source/drain regions by Dennard’s salicidation process. Dennard thus does not disclose source/drain regions beneath the silicide layers that are enriched with dopant from the silicide layers as claimed in independent claims 13 and 19.

Similarly, Sitaram does not teach or suggest anything about source/drain regions enriched with dopant from the silicide layers.

Furthermore, the Examiner has presented no other factual evidence to support the rejections, and has failed to respond to several requests from the Applicant for Examiner Affidavits pursuant to 37 CFR §1.104(d)(2) (2002).

In fact, the only attempt by the Examiner to explain the dopant enrichment aspect of the rejections was in the Examiner’s *Response to Arguments* in the Final Office Action, wherein the Examiner asserted inherency:

“However, silicide layer in Dennard inherently provides dopant to the source/drain regions.

But the Examiner has presented no basis in fact and/or technical reasoning to support such an assertion of inherency, nor any showing that it must necessarily flow from the teachings of the applied prior art. The rejections are therefore improper because:

“In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original) (The Board reversed the examiner’s rejection because the examiner did not provide objective evidence or cogent technical reasoning to support the conclusion of inherency.).

Serial No.: 10/727,999  
Group Art Unit: 2818

The Examiner also stated:

"Applicant failed to provide evidences [sic] to show otherwise."

However, as has been shown above, since the Examiner has not established a *prima facie* case of anticipation or obviousness, the burden is not on the Applicant to provide evidence at this stage, but rather on the Examiner, because:

"It is by now well settled that the burden of establishing a *prima facie* case of anticipation resides with the Patent and Trademark Office." *Ex parte Skinner*, 2 USPQ2d 1788, 1788-89 (B.P.A.I. 1986).

"As adapted to *ex parte* procedure, *Graham* [v. John Deere Co.] is interpreted as continuing to place the 'burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103.'" *In re Piasecki*, 745 F.2d 1468, 223 USPQ 785, 788 (Fed. Cir. 1984), quoting *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 177 (C.C.P.A. 1967), *cert. denied*, 389 U.S. 1057 (1968). [underlining for clarity]

Accordingly, the Examiner has failed to established a *prima facie* case of anticipation or obviousness for claims 13 and 19, as well as the claims depending therefrom, because:

"Anticipation requires the disclosure in a single prior art reference disclosure of each and every element of the claim under consideration." *W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983) (citing *Soundsciber Corp. v. United States*, 360 F.2d 954, 960, 148 USPQ 298, 301 (Ct. Cl.), *adopted*, 149 USPQ 640 (Ct. Cl. 1966)), *cert. denied*, 469 U.S. 851 (1984). *Carella v. Starlight Archery*, 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed. Cir.), *modified on reh'g*, 1 USPQ 2d 1209 (Fed. Cir. 1986); *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Since the Examiner has produced no such factual basis, the claim rejections are reversible error.

#### Conclusion

It is respectfully submitted that the Examiner erred in the attempt to create *prima facie* cases of anticipation under 35 U.S.C. §102 and obviousness under 35 U.S.C. §103 by citing

Serial No.: 10/727,999  
Group Art Unit: 2818

references that do not disclose, teach, or suggest source/drain regions enriched with dopant from the silicide layers.

In view of the above, it is submitted that claims 13-20 are in condition for allowance and such action at an early date is solicited.

Respectfully submitted,



Mikio Ishimaru  
Registration No. 27,449

The Law Offices of Mikio Ishimaru  
333 W. El Camino Real, Suite 330  
Sunnyvale, CA 94087  
Telephone: (408) 738-0592  
Fax: (408) 738-0881  
Date: January 7, 2006